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Supreme Court of the United States

October Term, 1941

No. ~~819~~ 7

IN THE MATTER
of
THE WESTERN PACIFIC RAILROAD COMPANY,
a corporation,
Debtor,

FREDERICK H. ECKER, JOHN W. STEDMAN and REEVE SCHLEY, constituting the INSTITUTIONAL BONDHOLDERS COMMITTEE,
Petitioners,

vs.

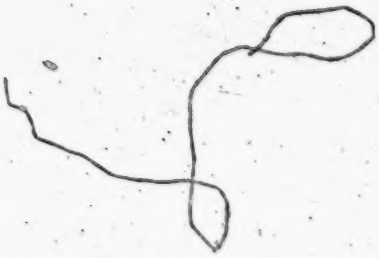
WESTERN PACIFIC RAILROAD CORPORATION, a corporation; A. C. JAMES CO., a corporation; THE RAILROAD CREDIT CORPORATION, a corporation; THE WESTERN PACIFIC RAILROAD COMPANY, a corporation; IRVING TRUST COMPANY, a corporation, as substituted Trustee under the General and Refunding Mortgage of Western Pacific Railroad Company; RECONSTRUCTION FINANCE CORPORATION; and CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO and SAMUEL ARMSTRONG, as Trustees under the First Mortgage of The Western Pacific Railroad Company, a corporation,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

ROBERT T. SWAINE,
Attorney for Frederick H. Ecker, John W. Stedman and Reeve Schley, constituting the Institutional Bondholders Committee, Petitioners.

HERBERT W. CLARK,
Of Counsel.

December 20, 1941.



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***Statutes*[1]**

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[1]Citations to Section 77 of the Bankruptcy Act are too frequent to enumerate. Pertinent portions of Section 77 are printed in the Appendix.

Supreme Court of the United States

October Term, 1941

No.

IN THE MATTER OF

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THE WESTERN PACIFIC RAILROAD COMPANY, a corporation,

Debtor.

FREDERICK H. ECKER, JOHN W. STEDMAN and REEVE SCHLEY, constituting the INSTITUTIONAL BONDHOLDERS COMMITTEE,

Petitioners,

vs.

WESTERN PACIFIC RAILROAD CORPORATION, a corporation; A. C. JAMES CO., a corporation; THE RAILROAD CREDIT CORPORATION, a corporation; THE WESTERN PACIFIC RAILROAD COMPANY, a corporation; IRVING TRUST COMPANY, a corporation, as substituted Trustee under the General and Refunding Mortgage of Western Pacific Railroad Company; RECONSTRUCTION FINANCE CORPORATION; and CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO and SAMUEL ARMSTRONG, as Trustees under the First Mortgage of The Western Pacific Railroad Company, a corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Frederick H. Ecker, John W. Stedman and Reeve Schley, constituting the Committee[1] representing a Group of Institutional Holders of the First Mort-

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[1]The Committee was permitted to intervene in the proceeding before the Interstate Commerce Commission by order entered July 9, 1936 (R. 2620) and in the proceeding before the District Court by order entered November 27, 1939 (R. 2620).

gage Bonds of the Debtor,[1] organized pursuant to the provisions of Section 77(p) of the Bankruptcy Act [11 U. S. C. § 205 (p)], respectfully pray for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit to review a Decree entered November 28, 1941, by said Court, reversing an Order of the United States District Court for the Northern District of California, Southern Division.

The District Court, in a proceeding for the reorganization of The Western Pacific Railroad Company, the Debtor, under Section 77 of the Bankruptcy Act (11 U. S. C. § 205), by Order entered August 15, 1940, approved the plan of reorganization (hereinafter called the Commission Plan) formulated and approved by the Interstate Commerce Commission (hereinafter called the Commission) and certified by it to the District Court (R. 1600). On appeal by several junior interests, the Circuit Court of Appeals for the Ninth Circuit entered the Decree here sought to be reviewed, remanding the proceeding to the District Court with directions to dismiss it, or in the Court's discretion or on motion of any party in interest, to refer it back to the Commission for further action. The Decree also imposes costs of the appeal upon the creditors who defended the Commission Plan before the District Court and the Circuit Court of Appeals.

The opinion of the Circuit Court of Appeals interprets, your petitioners submit erroneously, the decision of this

[1]The members of the Group are John Hancock Mutual Life Insurance Company; Metropolitan Life Insurance Company; Mutual Benefit Life Insurance Company; New York Life Insurance Company; Prudential Insurance Company of America; Travelers Insurance Company; and The Chase National Bank of the City of New York. Their aggregate holdings of First Mortgage Bonds are $16,641,400, principal amount, out of a total of $49,290,100, or 34%.

Court in *Consolidated Rock Products Co.* v. *DuBois*, 312 U. S. 510 (1941). It bases its Decree primarily upon a finding that Section 77 imposed the duty upon the Commission to make 16 specific determinations of value in terms of dollars and cents, and a further finding that "That duty was not performed" (R. 2671), despite specific findings by the Commission that the claims of unsecured creditors and the equity of the stockholders "have no value" and specific evaluations of the other existing claims in terms of the proposed new securities.

OPINIONS BELOW

The Commission's Original Report and Order, dated October 10, 1938 (R. 194), approving a plan for the reorganization of the Debtor, is reported at 230 I. C. C. 61. The Commission's Report and Order on further consideration, dated June 21, 1939 (R. 300), modifying its plan for reorganization of the Debtor, is reported at 233 I. C. C. 409. The Commission's Order dated September 19, 1939 (R. 884), denying the petition of the Debtor seeking modification of the Commission Plan, is reported at 236 I. C. C. 1.

The opinion of the District Court, dated August 15, 1940 (R. 1569), approving the Commission Plan, is reported at 34 F. Supp. 493. The opinion of the Circuit Court of Appeals, dated November 28, 1941 (R. 2663), reversing the District Court, has not yet been officially reported.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 [28 U. S. C. § 347(a)], and Section

24(c) of the Bankruptcy Act [11 U. S. C. § 47(c)]. The Decree of the Circuit Court of Appeals for the Ninth Circuit was entered November 28, 1941 (R. 2675-6).

STATEMENT

This proceeding is the first in which review has been sought before this Court of a plan of reorganization for a railroad corporation, formulated pursuant to the provisions of Section 77 of the Bankruptcy Act (11 U. S. C. § 205). The findings of the Commission and the basic legal principles adopted by the Commission in the distribution of new securities under the Commission Plan, affirmed and approved by the District Court, but now disapproved by the Circuit Court of Appeals for the Ninth Circuit, are substantially the same as the findings made, and the principles adopted, in numerous other railroad reorganizations under Section 77, some of which are pending in district courts and others of which have been approved by various district courts and are now pending on appeal in various circuit courts of appeals.[1]

The Debtor filed its petition under Section 77, August 2, 1935 (R. 11, 18). The proceedings before the Commission, in which hearings commenced March 23, 1936, culminated September 28, 1939, in the certification of the Commission Plan by the Commission to the District Court (R. 1571).

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[1]The Circuit Court of Appeals for the Seventh Circuit, on December 4, 1941, reversed the order of the District Court of the United States for the Northern District of Illinois, Eastern Division, approving the plan of reorganization for the *Chicago, Milwaukee, St. Paul and Pacific R. R.* As hereinafter pointed out, this decision (not yet reported) is in some respects in conflict with that of the Circuit Court of Appeals for the Ninth Circuit in the instant case, but in other respects is in accord.

1. Present Capitalization of the Debtor (R. 1576)

Claim or Interest	Principal of claim or interest	Accrued interest at contract rate to January 1, 1939[1]	Total claim, including interest at contract rate to January 1, 1939[1]
tees' Certificates	$	$	$
RFC)	10,000,000.00	—	10,000,000.00
isturbed existing equip-			
ent obligations	2,750,050.00	94,202.00	2,844,252.00
Mortgage 5% Bonds	49,290,100.00	13,143,776.66	62,433,876.66
[2] Notes[3]	2,963,000.00	899,869.98	3,862,869.98
[2] Notes[3]	2,445,609.88	145,314.23	2,590,924.11
[2] Notes[3]	4,999,800.00	1,249,950.00	6,249,750.00
Total secured debt	$ 72,448,559.88	$15,533,112.87	$87,981,672.75
Corp.[2] and Western Realty			
.[4] advances on open ac-			
unt	5,818,791.00	1,992,096.00	7,810,887.00
Total debt	$ 78,267,350.00	$17,525,208.87	$ 95,792,559.75
Corp., owner of the			
tire outstanding 283,000			
ares of Preferred Stock,			
r value $100 per share	28,300,000.00	—	28,300,000.00
Corp., owner of the			
tire outstanding 475,000			
ares of Common Stock,			
r value $100 per share	47,500,000.00	—	47,500,000.00
Totals	$154,067,350.88	$17,525,208.87	$171,592,559.75

The effective date of the Commission Plan.

Hereinafter the following abbreviations are used: RFC—Reconstruction Finance Corpora- RCC—Railroad Credit Corporation; ACJ—A. C. James Co.; WP Corp.—Western ic Railroad Corporation.

The RFC Notes, the RCC Notes, and the ACJ Notes are collectively secured, in the ic amounts hereinafter stated, by all of the $18,999,500, principal amount, of the Debtor's nding Bonds. No Refunding Bonds have been issued except for such pledge.

The RFC Notes are secured by the pledge of $10,750,000 of said Refunding Bonds and by ond lien upon $2,000,000 of Refunding Bonds pledged under the RCC Notes.

The RCC Notes are secured by the pledge of $4,000,000 of Refunding Bonds, of which 0,000 were repledged with it by ACJ, and by a second lien on all the collateral pledged RFC.

The ACJ Notes are secured by the pledge of $4,249,500 of Refunding Bonds and by a d lien upon $2,000,000 of Refunding Bonds originally pledged under the ACJ Notes but lged by ACJ under the RCC Notes.

n addition, both the RFC Notes and the RCC Notes are secured by certain so-called "ac- nodation collateral", not owned by the Debtor, but pledged to secure said Notes by WP

The RCC Notes are also secured by a first lien on the Debtor's distributive share in und established by the Marshalling and Distributing Plan, 1931. The right of RFC and to resort to this collateral is not affected by the Commission Plan (R. 271, 394-5).

Western Realty Co. is a wholly owned subsidiary of WP Corp., and a small part of the ured debt of the Debtor stands in its name.

2. New Capitalization under the Commission Plan (R. 1575)

Title of issue	Presently to be issued	Annual charges
Undisturbed existing equipment obligations	$ 2,750,050	$ 94,202
First Mortgage 4% Bonds, Series A, due January 1, 1974	10,000,000	400,000
Total annual fixed charges		$ 494,202
Mandatory Capital Fund		500,000
Income Mortgage 4½% Bonds, Series A, due January 1, 2014. Interest cumulative to 13½%, otherwise non-cumulative	21,219,075	954,858
Total funded debt	$33,969,125	
Total annual charges (fixed and contingent) and Capital Fund		$ 1,949,060
Income Mortgage Sinking Fund		106,095
Participating 5% Preferred Stock ($100 par value). Dividends non-cumulative, participating share for share with Common Stock in dividends declared in any year after dividends have been declared on Common Stock at rate of $3 per share	31,850,297	1,592,515
Total securities with par value	$65,819,422	
Total annual charges, Capital Fund, and Preferred dividend requirements		$ 3,647,670
Common Stock (without par value)	319,441 shs.	

3. Distribution under the Commission Plan

The claim of the First Mortgage to a first lien, subject to the Trustees' Certificates, upon substantially all the Debtor's assets, except the securities of certain subsidiary corporations specifically pledged with the Refunding Mortgage Trustee,[1] was disputed, and the value of the collateral upon which the Refunding Mortgage is admittedly a first

[1] In 1934, pursuant to an agreement extending the payment of 1934 interest on the Debtor's First Mortgage Bonds, RFC,

lien was also disputed. In order to allocate the new securities, the Commission preliminarily decided the disputed lien questions, deciding them in favor of the First Mortgage, but expressly subject to ultimate determination by the District Court.[1] The Commission also decided the disputed value questions, in the manner hereinafter stated.

The Commission then found that "the equity of the existing stock has no value," that "the claims of the unsecured creditors have no value," that the securities allocable to the RFC Notes, RCC Notes, and ACJ Notes are "inadequate in value to satisfy their claims," and that "the equity of" RCC in the collateral pledged with RFC "has no value". After making the additional findings hereinafter stated, the Commission excluded from participation in the reorganization the unsecured claims and stock held by WP Corp. and Western Realty Co., and distributed the new capitalization as follows (R. 1578):

Existing Securities of Debtor	New First Mortgage 4% Bonds Series A	New Income Mortgage 4½% Bonds Series A	New 5% Preferred Stock Series A ($100 Par)	New Common Stock (No Par)
First Mortgage 5% Bonds		$19,716,040	$29,574,060	230,593 shs.
RFC (In exchange for Trustees' Certificates and RFC Notes)	$10,000,000	1,185,200	1,777,800	15,788 shs.
RCC Notes		154,111	241,681	35,425 shs.
ACJ Notes		163,724	256,756	37,635 shs.
Totals	$10,000,000	$21,219,075	$31,850,297	319,441 shs.

ACJ, RCC and WP Corp. (the only other creditors affected by the Commission Plan) agreed to subordinate their claims against the Debtor until this 1934 interest (still unpaid) is paid in full. Accordingly the case presents no problem as to the relative rights of senior and junior creditors in unmortgaged assets. I. C. C. Exhibits 117-121 (not printed pursuant to stipulation at R. 2532-8, 2614).

[1]Record references for all the factual statements made under this heading are hereinafter set forth.

4. Valuation Data before the Commission

The Commission Plan was formulated by the Commission itself after more than a dozen different plans had been proposed by the various parties and upon evidence occupying 743 pages of the record. This evidence included physical descriptions of the properties of the Debtor and each of its subsidiaries (R. 1861-3, 1886-1898, 2049-2060), comprehensive data concerning valuation proceedings affecting those properties conducted by the Commission under Section 19(a) of the Interstate Commerce Act (R. 2044-8), analyses of the Debtor's investment accounts (R. 1874-5, 1885-1894, 2040-2043, 2058-2060) and its financial history (R. 1859-1873), detailed studies of revenues and expenses for the years since 1922, broken down as among the Debtor and its subsidiaries (R. 1958, 2033-2092, 2121-8, 2239-2260), detailed forecasts of revenues and earnings for the then future years 1936 to 1940, also broken down as among the Debtor and its subsidiaries (R. 1959-1998, 2027-2032, 2118-2193), and testimony with reference to the probable effect upon revenues and net income of the rehabilitation program then under way (R. 1985-6, 2145-2152, 2172-2185, 2225-2233), of the Northern California Extension, completed in 1931 (R. 1942-8, 2094-8), and of the Dotsero Cutoff, completed in 1934 (R. 1939, 2099-2100). Extensive testimony also dealt with the various lien controversies between the First Mortgage and the Refunding Mortgage (R. 2295-2563).

After hearings, the Commission's Bureau of Finance served upon all the parties a Tentative Report proposing findings and conclusions, including a reorganization plan (R. 116). Following exceptions to this Tentative Report by all parties and a hearing before the full Commission, the

Commission entered its Report and Order dated October 10, 1938, making findings and approving a plan of reorganization (R. 194). Upon petitions for modifications of this Report and Order and a hearing before the full Commission, the Commission entered its Report and Order dated June 21, 1939 (R. 300), modifying both the findings and the plan of reorganization embodied in its earlier Report and Order. After a petition by the Debtor for a "further rehearing and modification", the Commission entered its Report and Order dated September 19, 1939 (R. 884), reaffirming its findings and conclusions of October 10, 1938, as modified June 21, 1939, and denying the Debtor's petition.

5. Findings Made by the Commission

The Commission defined the requirements of "the public interest" with respect to the new capital structure as follows:

"The public interest is not defined, but it would seem obvious that to be compatible with the public interest, the plan must provide a capital structure for the reorganized company which will give it a reasonable opportunity to function efficiently and continuously as a going concern. This requires that the capitalization should not exceed a conservative appraisal of the assets to be taken over by the reorganized company, and that proposed charges, whether fixed or contingent, be within its probable earning power" (R. 243-4).

"If this reorganization is to be successful, the capital structure of the reorganized company must be realistically related to its actual earning power, and consideration given to the investment in its property only to the extent that

such investment is justified by the probable earnings reasonably foreseeable for the future" (R. 244).

The Commission then made the following findings which the Circuit Court of Appeals for the Ninth Circuit has now held to be inadequate:

A. *Findings as to capitalization*

1. Following analysis of the various proposals of the different parties in the light of the Debtor's earnings experience: "if these data are not to be ignored, * * * the fixed interest charges of the reorganized company should not initially and substantially exceed $500,000, if the reorganized company is to maintain its property properly and secure necessary new capital in the future" (R. 246).

2. Following further analysis of the Debtor's earnings experience and analysis of the testimony respecting prospective earnings: "On the basis of the facts heretofore recited with respect to traffic and earnings, we find that the total annual fixed and contingent interest charges of the reorganized company, plus requirements for the capital and sinking funds should not exceed $2,000,000 per annum" (R. 253).

3. Following further analysis of the proposals of the various parties with respect to the new stock issuable and further analysis of the Debtor's forecasts of future earnings: "As hereinbefore stated, the debtor's estimate of income available for interest averaged $2,715,306 per year for the period 1936-40, inclusive, the maximum amount for any one year in the period (1940) being $3,769,836. That

amount, with prior charges of $1,898,223, would permit the payment of dividends at the rate of 5 percent on only $37,432,000 of stock. It is obvious, therefore, that based on the most optimistic estimate of earnings of record, the capitalization of the reorganized company must be maintained within strict limits if any material return on its capital stock is to be expected and the shares of its stock are not to become mere tokens for stock market speculation. It is true that considered alone, the data pertaining to the rate-making value of the debtor's property, and its investment, would support capitalizations approximating those proposed in the three plans. We have hereinbefore stated, however, the reasons why, in our opinion, those factors can not be of controlling importance in a determination of the capital structure for the reorganized company. Considering all relevant data of record, we find that the approved plan should provide for the immediate issue by the reorganized company of not to exceed 295,740-3/10 shares of preferred stock of the par value of $100 per share, and not more than 313,703 shares of no-par-value common stock"[1] (R. 257).

4. On the basis of the foregoing findings the Commission, by its Report and Order dated October 10, 1938, fixed the permissible new capitalization (R. 259, 268). By its later Report and Order dated June 21, 1939, it slightly modified this capitalization to that provided by the Commission Plan (R. 309-310).

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[1]The amounts of Preferred and Common Stock thus found permissible were slightly modified by the Commission's Report and Order dated June 21, 1939, and the amounts thereof fixed as provided by the Commission Plan. (R. 310-311).

B. *Findings as to classes excluded from participation*

5. "We have hereinbefore found that considering the past, present, and probable future earnings of the debtor, its investment, the data of record pertaining to its rate-making value, and all other relevant data of record, we can not approve the issue of new securities in a greater amount than that hereinbefore approved. On the same basis and for the same reasons we find, therefore, that there is no equity over and above the securities hereinbefore approved; that *the equity of the existing stock has no value,* and hence holders of such stock are not entitled to participate in the plan. Further, considering that the reorganized company's income available for interest and dividends must total $4,318,035, plus any undistributed profits tax that will be payable, before dividends of $3 per share may be paid on the new common stock, it is clear that *even though all the securities remaining available for distribution after satisfying the claims of the first-mortgage bondholders are allotted to the other secured creditors, such securities will be inadequate in value to satisfy their claims.* For this reason, and for the reasons stated with respect to the finding that the equity of the existing stock has no value, we find that *the claims of the unsecured creditors,* of the Western Pacific Railroad Corporation, and of the Western Realty Company, *have no value,* and hence no securities or cash should be distributed under the plan in respect to those claims"[1] (R. 269-270) (Italics added).

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[1]The Commission had no problem of dealing with the rights of unsecured creditors to participate in unmortgaged assets. See p. 6, n. 1, *supra.*

6. Upon the Debtor's petition for modification of the Reports and Orders dated October 10, 1938, and June 21, 1939, by increasing the amount of Income Bonds $4,475,000, decreasing the amount of Preferred Stock $3,278,137, and increasing the no par value Common Stock 205,859 shares: "The allocation of 8.54 percent of the new common stock to the Western Pacific Railroad Corporation, in its capacity as a general creditor, and 23.59 percent to it in its capacity as a stockholder, and 0.07 percent to the Western Realty Company as a general creditor would require a reversal of our findings that those interests have no value, or a finding that the concessions required of the senior interests are justified and are compensated by concessions to be made by the junior interests. This proposed sharing of common stock affects also our previous finding as to what constitutes fair and equitable treatment of part of the interests of the first-mortgage bondholders. The debtor's petition does not set forth or offer to prove facts indicating that our findings with respect to these matters were erroneous or furnish any other basis for a finding that the proposed new plan would be fair and equitable". (R. 889-890).

C. *Findings as to allocation of new securities*

7. The Commission found that all of the permissible new fixed charge securities would be absorbed by undisturbed equipment obligations and new First Mortgage Bonds required to pay or refund the admittedly preferred $10,000,000 Trustees' Certificates (R. 247, 311).

8. As already stated, the Commission found that the First Mortgage was a legal or equitable first lien upon all of the assets of the Debtor, except cash and securities

specifically held in pledge by the Refunding Trustee. In its Report and Order dated October 10, 1938, the Commission found that the First Mortgage Bondholders' claim of $49,290,100 principal amount, plus accrued interest, secured by these assets, entitled them to all the new Income Mortgage Bonds ($19,716,040), and all the new Preferred Stock ($29,574,060), a par value total of $49,290,100, and 154,241 shares, or slightly less than half, of the new no par Common Stock (R. 270). This allocation was modified by the Report and Order dated June 21, 1939, primarily by increasing the no par Common Stock allocable to the existing First Mortgage Bondholders, as against their accrued interest of $13,143,777, to 230,593 shares and by allocating additional Income Bonds and Preferred Stock to the existing Refunding Bonds (R. 317).

9. The securities pledged under the Refunding Mortgage[1] were a note and stock of Tidewater Southern Railway Company, all of whose funded debt and 97.5% of whose stock are owned and so pledged by the Debtor (R. 313), Central California Traction Company, of whose bonds and stock the Debtor owns and has pledged 33⅓% (R. 314), and Alameda Belt Line Company, of whose stock the Debtor owns and has pledged 50% (R. 315). The Commission analyzed the property accounts, earnings records and earnings prospects of these three companies. In the light of the contributions which the Debtor has been compelled to make to continue the operations of the last two mentioned companies[2] and their poor earnings record, the

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[1]In addition there are so pledged some admittedly worthless notes of other subsidiaries (R. 1095).

[2]These unreimbursed contributions totalled more than $384,000 for the six years 1930-1935 (R. 2084, 2088).

Commission found that "The holdings of the debtor in the securities of the Central California Traction Company and the Alameda Belt Line, * * *, do not appear to be of much value, except as the debtor through such holdings may be able to secure traffic for its lines which it might not otherwise be able to secure. * * * Thus the lien on the securities of these two companies *has no material value*" (R. 314-5) (Italics added). In respect of Tidewater Southern, the Commission found that the rate-making value of all its property as of December 31, 1935 was $1,850,000 (R. 314). This was 1.3% of the comparable System valuation found by the Commission as of the same date. The Commission also found Tidewater Southern's reported earnings and the revenues from traffic interchanged between it and other lines of the Debtor's System (R. 314). Such reported earnings for the six-year period 1930-1935 (R. 2077) were 7.2% of System earnings, as adjusted (R. 1592), for the same period before deducting from System earnings the Debtor's contributions (R. 2084, 2088) to the deficits of the other two properties on whose securities the Refunding Mortgage was also a first lien. But, said the Commission, "It is apparent that the Tidewater Southern is a paying railroad and also a valuable feeder for the debtor. But its earnings are, to a large extent, dependent upon the divisions of joint rates accorded it by the debtor" (R. 315).[1] After the foregoing findings and after reference to the cash held by the Refunding Mortgage Trustee (R. 313), the Commission found: "From the foregoing, it ap-

[1]It will be remembered that the Debtor owns all the funded debt and 97.5% of the outstanding stock of Tidewater Southern Railway Company, so that the fairness of these rate divisions was not a matter of importance except in reorganization.

pears that the creditors secured by the general and refunding mortgage bonds should be awarded new income mortgage bonds in the amount of $732,010, and new participating preferred stock of a par value of $1,147,955" (R. 315). The amounts stated represent 3.5% of the total Income Bonds and Preferred Stock to be issued in the reorganization.

10. The RFC Notes, the RCC Notes, and the ACJ Notes were secured by pledge, respectively, of 56.6%, 21.1%, and 22.3% of the outstanding Refunding Bonds. "Having found that" the securities "available for distribution are inadequate in value to satisfy the aggregate claims of these parties" (R. 271) the Commission found that "The value of each of the claims is proportionate to the collateral securing it," (R. 271) and hence that the allotment of new securities representing the pledged Refunding Bonds "should be made on the basis of the collateral held rather than on the amount of the claims" (R. 271).

No findings were made as to the value of so-called "accommodation collateral" held by RFC and RCC, but the right of these parties to resort to this collateral was expressly left unimpaired by the Commission Plan (R. 271, 394-5).

11. To insure payment or refunding of the $10,000,000 Trustees' Certificates upon terms not unduly onerous to the other creditors, the Commission Plan, as approved by the Report and Order dated June 21, 1939, provided for treating RFC's entire "bundle of rights" (its $10,000,000 Trustees' Certificates and the RFC Notes) together, by allotting RFC $10,000,000 of new First Mortgage Bonds (to be taken by RFC in exchange for the Trustees' Certificates or to be purchased by RFC at par and the proceeds thereof ap-

plied to the payment of the Trustees' Certificates) and allotting to the RFC Notes treatment *pari passu* with that allotted the Debtor's existing First Mortgage Bonds. With respect to RFC's acceptance of the new First Mortgage Bonds in exchange for its Trustees' Certificates, the Commission found "that in consideration of such purchase and the value of the collateral securing its claim, the Finance Corporation receive for the secured notes of the debtor held by it, treatment equal to that accorded the holders of the debtor's existing first-mortgage bonds" (R. 312). RFC was thus allotted, to offset the difference between the value of its $10,000,000 short term Trustees' Certificates and the value of the $10,000,000 new long term First Mortgage Bonds, to be issued under an open mortgage, $771,025 more new Income Mortgage Bonds and $1,128,282 more new Preferred Stock, but 29,360 less shares of new no par value Common Stock than it would have received solely on the basis of the Refunding Bonds pledged as collateral for the RFC Notes.

12. The "allocation of reorganization securities to the Finance Corporation exhausts the value of the collateral pledged by the debtor under the notes held by the Finance Corporation, and * * * *the equity of the Credit Corporation in such collateral has no value*" (R. 316) (Italics added).

13. On the basis of the findings referred to in the foregoing paragraphs 8, 9, 10 and 12, the Commission divided between the RCC Notes and the ACJ Notes the Income Bonds and Preferred Stock found by the Commission to be allocable as against their respective pledged proportions of the Refunding Bonds. The no par Common Stock remaining after filling out the existing First Mortgage Bonds with 230,593 shares against their accrued interest of $13,143,777, and allotting the RFC Notes *pari passu*

treatment, was then divided between RCC and ACJ. Since this Common Stock necessarily represented (a) the value of the second lien of the Refunding Mortgage upon those assets of the Debtor upon which the First Mortgage was a first lien (R. 267, 271) and (b) any hope for future value of the assets upon which the Refunding Mortgage was a first lien but which the Commission found to be of "no material value" (R. 315), it was allocated to the RCC Notes and ACJ Notes proportionately to the Refunding Bonds held by them as collateral.

14. The ultimate finding of the Commission was: "These securities [*i.e.*, all the new securities available for distribution] represent the equitable equivalent of the debtor's assets available for the satisfaction of claims * * *. Based upon our conclusion as to the relative priority, value, and equity of the various claims and the value of the new securities available in exchange therefor, we find that the new securities should be allotted as follows: (1) First-mortgage bondholders, $19,716,040 of income-mortgage bonds, $29,574,060 of preferred stock, and 230,593 shares of common stock (the common stock to be taken at the price of $57 a share); (2) Finance Corporation, $1,185,200 of income-mortgage bonds, $1,777,800 preferred stock, and 15,788 shares of common stock (the common stock to be taken at a price of $57 a share); (3) Credit Corporation, $154,111 of income mortgage bonds, $241,681 preferred stock, and 35,425 shares of common stock, (the common stock to be taken at a price of $62 a share); and (4) James Company, $163,724 of income mortgage bonds, $256,756 preferred stock, and 37,635 shares of common stock (being the amount of common stock which bears to the amount of common stock allotted to the claim of the

Credit Corporation the same proportion that the principal amount of general and refunding bonds of the debtor held by the James Company as collateral for its claim bears to the principal amount of such bonds held by the Credit Corporation for its claim)" (R. 316-318).

The Commission did not specifically find any certain and absolute value in terms of dollars and cents for all or any part of the Debtor's property, for any of the existing claims against or interests in the Debtor, or for any of the new securities contemplated by the Commission Plan. The lack of such findings is held by the Circuit Court of Appeals for the Ninth Circuit to vitiate a[illegible]e other findings and all the conclusions of the Commission.

6. Proceedings before the District Court

Upon certification of the Commission Plan to the District Court, objections and claims for equitable treatment were filed by RCC, ACJ, WP Corp., Western Realty Company, the Debtor, and the Refunding Trustee, which attacked, as to both form and substance, substantially every provision of the Commission Plan. Although the Committee and RFC also filed some objections and claims for equitable treatment, each of them stated that if the District Court approved the Commission Plan as an entirety they would waive their objections (R. 1760-1761, 1770).

Before the District Court, testimony was taken occupying 293 pages of the record (R. 1283-1529; 1530-1567). On August 15, 1940, the District Court filed a 31 page opinion (R. 1569-1600) overruling all of the objections and, after dealing specifically with the Commission's findings of value, determining them to be adequate in form and correct in substance. The District Judge's opinion further

expressed his accord with all of the conclusions of the Commission on the numerous points in dispute.

Pursuant to its opinion, the District Court, on August 15, 1940, entered an Order approving the Commission Plan, adopting the findings of fact made by the Commission, and making all the other findings in respect of the Commission Plan required at that stage of the proceedings by Section 77 (R. 1600-1607).

7. Action of the Circuit Court of Appeals

From the Order last mentioned appeals were taken to the Circuit Court of Appeals for the Ninth Circuit by RCC, ACJ, the Refunding Mortgage Trustee, WP Corp., and the Debtor.[1] Again the appellants attacked almost every aspect of the Commission Plan, although many of the objections argued before the District Court seem to have been abandoned. The Committee, the First Mortgage Trustees and RFC, designated as appellees, defended the Commission Plan as an entirety.

The Order of the District Court was reversed and the proceeding remanded to the District Court "with directions to dismiss it or, in the court's discretion and on motion of any party in interest, refer it back to the Commission for further action" (R. 2674). Without referring to any of the extensive findings of the Commission above recited, or the careful discussion by the District Court of the prob-

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[1] The appeals of the Refunding Mortgage Trustee and the Debtor were dismissed upon the ground that neither "was adversely affected" (R. 2668). The pledgees of all the Refunding Bonds were parties to the appeal. On December 20, 1941, counsel for the Refunding Trustee sent counsel for the petitioners a copy of a petition for rehearing, which they stated they intended to file in the Circuit Court of Appeals.

lems of value, the Circuit Court of Appeals thus disposed of the case:

> "Subsection (e) of § 77 provides: 'If it shall be necessary to determine the value of any property for any purpose under this section, the [Interstate Commerce] Commission shall determine such value and certify the same to the court in its report on the plan.' In this case, as has been seen, it was necessary to determine the value of (1) the debtor's entire property, (2) each of the claims of Reconstruction Finance Corporation, (3) the claim of Railroad Credit Corporation, (4) the claim of A. C. James Company, (5) the claims of the holders of first mortgage bonds now outstanding, (6) the $10,000,000 of new first mortgage bonds, (7) the $21,219,075 of income bonds, (8) the 318,502.97 shares of new preferred stock, (9) the 319,441 shares of new common stock, (10) the property subject to the first mortgage now outstanding, (11) the $18,999,500 of refunding bonds pledged to secure the claims of Reconstruction Finance Corporation, Railroad Credit Corporation and A. C. James Company, (12) the other collateral pledged to secure each of said claims, (13) the property subject to the refunding mortgage only, (14) the property subject both to the refunding mortgage and to the first mortgage now outstanding, (15) the property which would be subject to the new first mortgage and (16) the property which would be subject to the income mortgage. It thus became the duty of the Commission to determine these values and certify them to the court. That duty was not performed" (R. 2670-2671).

In addition to this holding, the Circuit Court of Appeals "made certain statements which if taken literally do not

comport with the requirements of the absolute priority rule". *Consolidated Rock Products Co.* v. *Du Bois, supra,* 312 U. S. at 530. As in that case, these statements, together with other statements of the Circuit Court of Appeals with reference to the relative functions of the Court and the Commission, require correction by this Court.

The opinion announces this guiding rule for distribution among existing securityholders: "Fairness requires that their participation should be in proportion to the value of their respective claims" (R. 2669). The opinion does not further clarify its announced rule. A mathematical formula based on dollars and cents valuations of properties, existing claims, and new securities seems to be required rather than determination of the relative order of priority of the participating existing claims in the system earnings.

The opinion of the District Court, in addition to expressing the District Judge's own independent analysis of the valuation problem and his own independent conclusions, had said:

> "It cannot be gainsaid that the Commission knows all about the debtor, its property, its history, financial and otherwise, its traffic and revenue, and its financial structure. No official body in the country is better qualified, by reason of experience, ability and specialized knowledge than is the Commission to find the ultimate facts as to the Debtor in relation to any of the matters mentioned" (R. 1588).

Quoting the foregoing statement of the District Court, the opinion of the Circuit Court of Appeals states:

> "The statement indicates a possible misconception. * * *
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> * * * * * * *

> "In determining whether a plan of reorganization satisfies the requirements of subsection (e), the court is not concluded by any determination made by the Commission, but may, and must, exercise its own independent judgment; and this is true whether such determination relates to value or to some other subject * * *" (R. 2672-4).

The significance of this comment of the Circuit Court of Appeals, as evidencing its belief that the District Court was under a duty to redetermine *all* of the issues involved in the reorganization and assert its own "informed independent judgment" if in any respect its views differed from those of the Commission, is accentuated by the fact that the District Court, following the quotation commented on by the Circuit Court of Appeals, had said (R. 1596-7):

> "The two issues of (1) amount and character of capitalization and (2) distribution of new securities are closely related. The determination of the amount and character of the capitalization (a legislative function affecting the public interest) is exclusively within the province of the Commission. The only qualification, if any, is that the court shall independently determine whether, in the exercise of its jurisdiction, the Commission has acted fairly, within the bounds of the Constitution, and not arbitrarily. The determination of the questions relating to the distribution of the new securities, including legal priorities and allocations, involves private rights and is a judicial function, within the province of the court."

QUESTIONS PRESENTED

1. Were the findings that "the equity of the existing stock has no value" and that "the claims of the unsecured

creditors * * * have no value," if supported by the requisite valuation data, sufficient to sustain the conclusions that the holders of such stock and such unsecured creditors are not entitled to participate in the reorganization?

2. Were the findings that the securities available for distribution to the RFC Notes, the RCC Notes and the ACJ Notes against the Refunding Bonds held by them as collateral were "inadequate in value to satisfy the aggregate claims of these parties," and that the "allocation of reorganization securities to" RFC "exhausts the value of the collateral pledged by the debtor" under the RFC Notes and that "the equity of" RCC "in such collateral has no value," if supported by the requisite valuation data, sufficient to support the conclusion that the allocation of new securities representing the pledged Refunding Bonds, as between RFC, RCC and ACJ, "should be made on the basis of the collateral held rather than on the amount of the claims"?

3. Must the allocation of new securities under a Section 77 railroad reorganization plan between mortgage bonds, having liens of different rank on the same assets and also liens on different assets, be "in proportion to the value of their respective claims", determined by absolute dollars and cents valuations (a) of the properties upon which they are, respectively, first liens, and (b) of the new securities proposed to be distributed in the reorganization? Or should each existing class be given its "equitable equivalent of the debtor's assets available for the satisfaction" of its claim in terms of the various classes of new securities, having regard for the relative order of priority of the respective existing claims upon the system earnings at the

various levels represented by the proposed new securities and all other relevant factors, all appraised by the Commission's expert judgment subject to the Court's approval of the result as fair and equitable?

4. Even if other allocations must be made on the basis of the mathematical dollars and cents valuation formula prescribed by the Circuit Court of Appeals, may not the preferred claim of RFC on its $10,000,000 Trustees' Certificates and its junior claim on the RFC Notes be dealt with as an "entire bundle of rights" and on the basis of a practicable and fair compromise in order to obviate the necessity of providing $10,000,000 of new money on terms necessarily more onerous to all present creditors of the Debtor?

5. Was the valuation data contained in the record sufficient to support the findings and conclusions of the Commission as to those entitled to participate in the reorganization and as to the allocations of new securities made by the Commission Plan?

6. What are the respective jurisdictions of the Commission and the Court with respect to approval of a reorganization plan under Section 77? Specifically, does not Section 77 vest in the Commission exclusive jurisdiction (subject only to review for arbitrary exercise) to determine whether a railroad reorganization plan is "compatible with the public interest", including jurisdiction to determine total capitalization, the classification thereof, and the financial details of each class of proposed capitalization?

7. Should not this Court, upon the entire record, reverse the Decree of the Circuit Court of Appeals and

affirm the Order of the District Court, approving the Commission Plan, in order to expedite the reorganization in the public interest and obviate the delay and expense which would otherwise result both to the public and to the private parties involved?

8. Are securityholders who defend in the circuit courts of appeals plans promulgated and approved by the Commission, and also approved by the district courts, liable for the costs of the appeals if the appeals are successful, or should such costs be assessed directly against the debtor's estate?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. Pursuant to Section 77, the Commission has formulated plans of reorganizations for fifteen Class I railroads.[1] Of these plans six have been consummated,[2] the remainder being at various stages of the procedure pre-

[1] *Akron, Canton & Youngstown Ry.*, 228 I. C. C. 645 (1938); *Chicago & Eastern Illinois Ry.*, 230 I. C. C. 199 (1938), 230 I. C. C. 571 (1939); *Chicago Great Western R. R.*, 228 I. C. C. 585 (1938), 233 I. C. C. 63 (1939); *Chicago, Milwaukee, St. Paul & Pacific R. R.*, 239 I. C. C. 485 (1940), 240 I. C. C. 257 (1940); *Chicago & North Western Ry.*, 236 I. C. C. 575 (1939), 239 I. C. C. 613 (1940); *Chicago, Rock Island & Pacific Ry.*, 242 I. C. C. 298 (1940); *Denver & Rio Grande Western R. R.*, 233 I. C. C. 515 (1939), 239 I. C. C. 583 (1940); *Erie R. R.*, 239 I. C. C. 653 (1940), 240 I. C. C. 469 (1940); *Louisiana & North West R. R.*, 224 I. C. C. 58 (1937), 230 I. C. C. 171 (1938); *Missouri Pacific R. R.*, 239 I. C. C. 7 (1940), 240 I. C. C. 15 (1940); *New York, New Haven & Hartford R. R.*, 239 I. C. C. 337 (1940); *St. Louis-San Francisco Ry.*, 240 I. C. C. 383 (1940), 242 I. C. C. 523 (1940); *St. Louis Southwestern Ry.* (July 15, 1941, not yet reported); *Spokane International Ry.*, 228 I. C. C. 387 (1938), 233 I. C. C. 157 (1939); *Western Pacific R. R.*, 230 I. C. C. 61 (1938), 233 I. C. C. 409 (1939), 236 I. C. C. 1 (1939).

[2] Akron, Canton & Youngstown Ry.; Chicago & Eastern Illinois Ry.; Chicago Great Western R. R.; Erie R. R.; Louisiana & North West R. R.; and Spokane International Ry.

scribed by Section 77. In thirteen of these plans,[1] classes of stockholders have been excluded from participation, and in four,[2] classes of creditors have also been excluded. In all these plans the findings of the Commission upon which the exclusions of stockholders and creditors and allocations of new securities among existing claims were based, the valuation data upon which the findings were based, and the legal principles applied in allocation were substantially identical in character with those found by the Circuit Court of Appeals for the Ninth Circuit to be inadequate and erroneous in the instant case.

The Securities and Exchange Commission, in dealing with the bankruptcy reorganization of public utility holding companies under Section 11(f) of the Public Utility Holding Company Act (15 U. S. C. § 79k(f)), performing functions similar to those performed by the Interstate Commerce Commission under Section 77 [*Peoples Light and Power Co.*, 2 S. E. C. 829, 847 (1937)], has in many cases predicated its plans upon similar findings and similar valuation data.[3]

If, therefore, the decision of the Circuit Court of Appeals for the Ninth Circuit is to stand, the years of effort and the literally millions of dollars expended by both the Interstate Commerce Commission and the affected security-

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[1]Akron, C. & Y.; Chicago & E. I.; Chicago Great Western; Chicago, M., & St. P. & P.; Chicago & North Western; Chicago, R. I. & P.; Denver & R. G. W.; Missouri Pacific; New York, N. H. & H.; St. Louis-S. F.; St. Louis Southwestern; Spokane International; Western Pacific.

[2]Denver & R. G. W.; St. Louis-S. F.; Spokane International; Western Pacific.

[3]*Mountain States Power Co.*, 5 S. E. C. 1 (1939); *National Public Utilities Corp.*, 5 S. E. C. 601 (1939); *Utilities Power & Light Corp.*, 5 S. E. C. 483 (1939); *West Ohio Gas Co.*, 3 S. E. C. 1014 (1938).

holders in all pending railroad reorganizations will have been largely futile. They will all revert to the Commission for detailed dollars and cents valuations of properties and old and new securities, inevitably resulting in long delay and great expense to all concerned. Memory of the Commission's valuation proceedings under the La Follette Act (49 U. S. C. § 19a) and their ultimate futility makes this an unhappy prospect. And then, says the Circuit Court of Appeals for the Ninth Circuit, the district courts must determine anew, by their own independent judgments, not concluded by any determination of the Commission, all of the questions involved in the reorganizations.

If this decision is not required by any existing decision of this Court, and as is believed, is in square conflict with decisions of this Court hereinafter referred to, the public interest will be promoted by the prompt settlement in this Court of all the questions involved.

2. In holding inadequate, as a basis for excluding stockholders from participation in the reorganization, the Commission's finding and certification that "the equity of the existing stock has no value" (and, by parity of reasoning, in holding inadequate the Commission's finding that "the claims of the unsecured creditors * * * have no value" and that "the equity of" RCC in "the collateral pledged" under the RFC Notes "has no value"), the Circuit Court of Appeals for the Ninth Circuit decided an important question of federal law in conflict with the decisions of this Court in *Consolidated Rock Products Co.* v. *DuBois*, *supra*; *Case* v. *Los Angeles Lumber Products Co.*, 308 U. S. 106 (1939), with the decision of the Circuit Court of Appeals for the Seventh Circuit in *In re Chicago, Milwaukee, St. Paul and Pacific R.R.* (December 4, 1941, not yet reported), and with

the decisions of the federal district courts in *In re Akron, Canton & Youngstown Ry.* (not reported, N. D. Ohio, 1939), *In re Chicago & North Western Ry.*, 35 F. Supp. 230, 245 (N. D. Ill., 1940), and *In re Missouri Pacific R.R.*, 39 F. Supp. 436, 444 (E. D. Mo., 1941), being all the district court decisions dealing with the specific point.

The express language of Section 77(e), as well as the decisions of this Court above cited, establish that the fact which necessitates exclusion of any class of existing securityholders from participation in a reorganization is the fact that the claim or interest of that class "has *no* value". *In re 620 Church St. Bldg. Corp.*, 299 U. S. 24, 27 (1936). If absence of value is certified by the Commission to the Court pursuant to subsection (e), and is established by adequate valuation data, it is submitted that it is wholly unimportant to know by how great a margin the claim or interest having no value falls short of having value. Hence, for the purposes of the finding and certification under immediate discussion, the determination of the absolute dollars and cents value of the Debtor's property, while it would be relevant as evidence, seems wholly unnecessary if other adequate valuation data is present to support the finding.[1]

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[1]Such, apparently, has been the rule followed by the Securities and Exchange Commission under Section 11(f) of the Public Utility Holding Company Act. See particularly *West Ohio Gas Co.*, *supra*, 3 S. E. C. at 1026-7 (1938), where the Commission said:

> "In passing upon the fairness of this plan it is not necessary for us to determine the exact value of the property or the amount at which its value shall be recorded on the books of the reorganized company. The evidence which has been submitted to us points to the conclusion that the property has very little, if any, value in excess of the aggregate amount ($1,755,977) of the claims of the bondholders."

If the decision of the Circuit Court of Appeals for the Ninth Circuit with respect to the findings under discussion is not in conflict with the decisions of this Court above cited, then the decision decided an important question of federal law which has not been, but should be, settled by this Court.

3. In deciding that allocations of new securities between those entitled to participate in a reorganization must be "in proportion to the value of their respective claims," determined in accordance with absolute dollars and cents valuations of properties, existing claims, and new securities, the Circuit Court of Appeals for the Ninth Circuit decided an important question of federal law in conflict with the decisions of this Court in *Consolidated Rock Products Co.* v. *DuBois*, *supra*, and *Case* v. *Los Angeles Lumber Products Co.*, *supra*, with the decisions of the Circuit Court of Appeals for the Seventh Circuit in *Jameson* v. *Guaranty Trust Co.*, 20 F. (2d) 808 (1927), *cert. denied*, 275 U. S. 569 (1927), and of the Circuit Court of Appeals for the Second Circuit in *In re Radio-Keith-Orpheum Corp.*, 100 F. (2d) 22 (1939), *cert. denied*, 308 U. S. 622 (1940), and with the decisions of the federal district courts in *In re Akron, Canton & Youngstown Ry.*, *supra*; *In re Chicago & North Western Ry.*, *supra*; *In re Denver & R. G. W. R. R.*, *supra*; *In re Erie R. R.*, 37 F. Supp. 237 (N. D. Ohio, 1940); *In re Missouri Pacific R. R.*, *supra*, and *In re New York, N. H. & H. R. R.*, *supra*.

While this Court, in its decisions above cited, stressed the necessity for adequate valuation data in order to determine the right of a class to participate in a reorganization and the fairness and equity of allocations among those classes entitled to participate, this Court emphasized that

the real measure of allocation is the earning power of the interests represented by the respective existing classes. And while this Court has held that mere observance of the relative order of priorities was not sufficient to validate a reorganization plan in which stockholders whose equity had no value had been admitted to participation, this Court has never indicated that a plan would be valid which did not recognize the relative priorities of the existing classes in the earning power of the venture, in such manner as might be practicable under all the circumstances. *Northern Pacific Ry.* v. *Boyd*, 228 U. S. 482 (1913); *Kansas City Terminal Ry.* v. *Central Union Trust Co.*, 271 U. S. 445 (1926); *Consolidated Rock Products Co.* v. *DuBois*, *supra*; *Case* v. *Los Angeles Lumber Products Co.*, *supra*.

The relative priorities of different claims against overall earning power may be dependent either upon the relative rank of their claims against the same assets, or, in the case of claims secured by liens upon different assets, upon the varying levels of the venture earnings at which the different assets securing the different claims begin to show earning power. Particularly is this true in the case of a railroad reorganization, where the property securing some bonds may show earning power even though the system as a whole may be operating at a deficit, while the property securing other bonds may not show earning power except at a relatively high level of system earnings.

If allocations among those entitled to participate in a reorganization must recognize the relative order of their priorities with respect to the earning power of the venture, at various levels, allocation cannot be made by any mathematical formula dependent upon absolute dollars and cents valuations of the property, existing claims, or new securities. Absolute dollars and cents valuations must neces-

sarily assume some precise level of earnings to be capitalized at some precise rate, and it would, in the case of a railroad, be illusory to attempt to fix such values at any particular earnings level.[1] The problem of a "fair and equitable" reorganization is, as the Commission said in the instant case, to give to each existing class of securities its "equitable equivalent of the debtor's assets available for the satisfaction" of its claim (R. 316) in terms of the new securities to be issued in the reorganization—new securities which will return the "equitable equivalent" to each existing claim *whatever* may be the level to which the earnings of the reorganized venture may fall or rise. The old claims participating in the reorganization must be fitted into the new capital structure at the levels of their respective priorities in the venture earnings so that, as nearly as may be at any given level of earnings, the new securities will produce for the claimant the equitable equivalent of what would have been produced by his old securities.

Such has been the method of allocation followed by the Commission, not only in the instant case, but in all the other reorganization plans approved by it under Section 77. Such too has been the test applied by all of the district courts which have thus far passed upon such plans whether or not they have approved the Commission's allocations.

This Court's decision in *Consolidated Rock Products Co.* v. *DuBois*, *supra*, does not prevent—it requires—that method of allocation.

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[1] This Court has recognized that "The very notion of a 'full cash value' for a railroad is in many respects artificial. * * * Whatever may be the pretenses of exactitude in determining such a 'value', to claim for it 'scientific' validity, is to employ the term in its loosest sense." *Nashville, C. & St. L. Ry.* v. *Browning*, 310 U. S. 362, 370 (1940).

The opinion of the Circuit Court of Appeals may also imply that upon determination of all of the values found to be necessary, each class of the new securities is to be distributed in the mathematical proportions stated to each class of existing claims entitled to participate. Patently, therefore, the statement of the Circuit Court of Appeals with respect to allocation, "if taken literally", does "not comport with the requirements of the absolute priority rule" or with the necessity for maintaining the relative priorities, and therefore requires correction by this Court. *Consolidated Rock Products Co.* v. *DuBois, supra,* 312 U. S. at 530.

If this decision of the Circuit Court of Appeals for the Ninth Circuit as to the proper basis for allocation of new securities is not in conflict with the decisions of this Court and of the Circuit Courts of Appeals for the Seventh Circuit and the Second Circuit above cited, then it decided an important question of federal law which has not been, but should be, settled by this Court.

4. If the decision of the Circuit Court of Appeals for the Ninth Circuit means that, since no absolute dollars and cents valuations of the claims and new securities involved were made, a fair and practical compromise of the claims of RFC on the $10,000,000 Trustees' Certificates and on the RFC Notes cannot be effected by treating the two claims as an "entire bundle of rights",[1] in order to obviate the necessity of providing $10,000,000 of new money on onerous terms, the Circuit Court of Appeals for the Ninth Circuit decided an important question of federal law in conflict

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[1] *Consolidated Rock Products Co.* v. *DuBois, supra,* 312 U. S. at 528.

with the decision of this Court in *Case* v. *Los Angeles Lumber Products Co., supra*, 308 U. S. at 130.

RFC gives up the right to collect $10,000,000 in cash on its one-year Trustees' Certificates, a right obviously readily enforceable. The $10,000,000 new 35-year, open-end First Mortgage Bonds into which RFC is willing to permit its Trustees' Certificates to be funded, are clearly less valuable. How much so, it is difficult to say with exactness. The Commission, as an expert in railroad securities, was competent to make an approximate appraisal. Testimony before the District Court indicated that a proper discount at the time of the District Court hearing was somewhere between 10% and 15% (R. 1530, 1532, 1536, 1554). To offset this sacrifice RFC was given, as against its RFC Notes, more Income Bonds and Preferred Stock, but less no par value Common Stock, than it would have been entitled to strictly upon the basis of the collateral securing these Notes. Both the Commission and the District Court thought the compromise fair. The First Mortgage Bondholders and the First Mortgage Trustees supported it. No evidence impugning its fairness was even offered.

To test the fairness and equity of such practical compromises upon the basis of a mathematical formula dependent upon dollars and cents valuations of properties, old securities, and new securities (which would probably be obsolete the day after they were made) is to adopt a wholly unrealistic approach to practical reorganization problems.

5. In deciding that "lacking the requisite valuation data" the District Court "was in no position to exercise the 'informed, independent judgment' which appraisal of

the fairness of a plan of reorganization entails" (R. 2671), the Circuit Court of Appeals for the Ninth Circuit decided an important question of federal law in conflict with the decisions of this Court in *Consolidated Rock Products Co.* v. *DuBois, supra; Case* v. *Los Angeles Lumber Products Co., supra;* and with the decisions of the federal district courts in *In re Akron, Canton & Youngstown Ry., supra; In re Denver & R. G. W. R. R., supra; In re Erie R. R., supra; In re Louisiana & N. W. R. R., supra; In re Missouri Pacific R. R., supra; In re New York, N. H. & H. R. R., supra.*

The Commission had before it almost every conceivable type of valuation study of the properties of the Debtor and of its subsidiaries. Particularly, it had before it studies of past, present, and then prospective earnings, segregated as among the Debtor and each of its subsidiaries, and thus as between the First Mortgage and the Refunding Mortgage.[1]

Exclusion of Classes

The Commission's finding that the equity of the existing stock has no value, and that the claims of the unsecured creditors have no value, was necessarily a finding that the properties embraced in the reorganization, and the new securities to be issued against those properties, had a value less than $87,981,672.75, the aggregate amount of the secured claims as of the effective date of the Commission Plan.

The Commission's finding that the new no par value Common Stock should be allocated against the claim of the existing First Mortgage Bondholders for accrued interest at the price of $57 per share (after allocating Income

[1]See p. 8, *supra.*

Bonds and Preferred Stock of a principal amount and par value equal to the principal amount of the claims of the existing First Mortgage Bondholders), was necessarily a finding that all the properties and new securities had a value for reorganization purposes not in excess of $84,027,559, which is the aggregate of the proposed new securities having a principal amount or par value, plus the entire 319,441 shares of no par value Common Stock taken at $57 per share.

If the valuation data contained in the record establishes that such properties and new securities have a value for reorganization purposes of not more than $84,027,559, then that valuation data clearly sustains the findings excluding unsecured creditors and stockholders from participation in the reorganization, as well as the findings that the second lien equity of RCC in the collateral pledged to secure the RFC Notes has no value, and that the allocation made to RFC in respect of its Notes "exhausts the value of the collateral pledged by the debtor" for the RFC Notes.

To sustain a finding of value for RCC's equity in the Refunding Bonds pledged to secure the RFC Notes[*] (let alone a value for the unsecured debt or stock), the 1934-1940 average earnings would have to be capitalized on at least a 1.72% basis; the 1930-1940 average earnings on at least a 1.91% basis; the 1922-1940 average earnings on at least a 2.76% basis; and the 1940 adjusted earnings on at least a 3.10% basis.

In the light of these facts it is submitted that no possible useful purpose could have been served by any finding

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[*] Such a finding would require an over-all value in excess of $84,027,559, the total new capitalization if the no par Common Stock is taken at $57 per share, the price at which it was allotted, to RFC. R. 312, 317.

of the Commission as to the precise amount in dollars and cents by which the value of the properties or of the new securities was less than $84,027,559.

Allocations of New Securities

The problem as to the adequacy of the valuation data to sustain allocations among securityholders entitled to participate in the reorganization is slightly different from the problem of its adequacy to support the exclusion or partial exclusion of various classes.

If the proper basis for allocation between two such claims as the existing First Mortgage Bonds and the existing Refunding Bonds is a determination of the equitable equivalents of the two existing claims in the earning power of the reorganized property, in terms of new securities reflecting such earning power, then your petitioners submit that in the instant case the Commission had before it the requisite financial data and made all the requisite findings and certifications.

Form of Valuation Data

In insisting upon findings of precise dollars and cents valuations, your petitioners submit that the Circuit Court of Appeals for the Ninth Circuit ignored substance for form.

Section 77 does not require formal findings, but merely that, "The commission shall state fully the reasons for its conclusions." Section 14 of the Interstate Commerce Act (49 U. S. C. § 14) requires merely that the Commission make its reports in writing, except in cases where damages are awarded, when findings of fact must

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[1] See *supra*, pp. 4, 13-19.

be included. In other proceedings, "there are no formal requirements for the findings to be made by the Commission." *United States* v. *Louisiana*, 290 U. S. 70, 80 (1933).

6. In deciding that the District Court "misconceived" its duties under Section 77 and should have exercised its own independent judgment with respect to every determination made by the Commission, the Circuit Court of Appeals for the Ninth Circuit decided an important question of federal law in conflict with the decisions of this Court in *Palmer* v. *Massachusetts*, 308 U. S. 79 (1939), *Palmer* v. *Warren*, 310 U. S. 132 (1940), *United States* v. *Morgan*, 313 U. S. 409 (1941), *Gray* v. *Powell*, 10 U. S. L. W. 4096 (U. S. S. C., December 15, 1941), and with decisions of the federal district courts in *In re Akron, Canton & Youngstown Ry., supra; In re Erie R.R., supra; In re Missouri Pacific R.R., supra; In re New York, N. H. & H. R.R., supra*. If said decision of the Circuit Court of Appeals for the Ninth Circuit is not in conflict with the decisions cited, then it decided an important question of federal law which has not been, but should be, settled by this Court.

There is no question of railroad reorganization practice more important than the demarcation of the functions of the Commission and the courts under Section 77.

Subsection (d) requires that the Commission shall determine that the plan which it approves shall be "compatible with the public interest". The subjects as to which Section 77 requires the District Court to be "satisfied" relate to either (a) matters affecting the private rights of the securityholders, such as the fairness or equity of allocation, or (b) purely formal requirements. The question whether the

plan is "compatible with the public interest" is not included. If the District Court is "satisfied" as to the matters committed to its jurisdiction it *"shall"* approve the plan certified to it by the Commission (Italics added).

If, in the face of this distinction so clearly made by the language of Section 77, the district courts must, as the Circuit Court of Appeals for the Ninth Circuit now indicates, redetermine all questions previously determined by the Commission, then the authority of the Commission and the courts would be hopelessly entangled, rather than "intertwined", it would be substantially impossible for the two bodies to "work cooperatively in reorganizations", and "the judicial process", rather than being "brigaded with the administrative process of the Commission"[1] would be off on a frolic of its own.

Obviously the only sensible interpretation of Section 77, as well as the only practical procedure for reorganization, is that the questions of "public interest", *i.e.*, over-all capitalization, classification of capitalization, and financial details of the new securities, as contrasted with the questions of private rights, shall be determined by the Commission, subject only to judicial review for abuse of administrative power. This Court has many times said that such review should be consistent with the principle that administrative agencies and the courts "are to be deemed collaborative instruments of justice and the appropriate independence of each should be respected by the other." *United States* v. *Morgan, supra,* 313 U. S. at 422.

The District Judge in the instant case recognized and, as his opinion indicates, carefully performed his duty to

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[1]The quotations are from *Palmer* v. *Massachusetts, supra,* 308 U. S. at 87, and *Palmer* v. *Warren, supra,* 310 U. S. at 138.

decide whether the Commission, in its determination of the questions of public interest, had "acted fairly, within the bounds of the Constitution, and not arbitrarily" (R. 1596-7). To the limited extent of such judicial review, he did regard himself, in the language of the Circuit Court of Appeals (R. 2674) as "not concluded by any determination made by the Commission" and, within the proper demarcation of his jurisdiction, he did exercise his "independent judgment".

7. In view of its failure, in conflict with the decision of this Court in *Continental Illinois National Bank & T. Co.* v. *Chicago, R. I. & P. Ry.*, 294 U. S. 648, 685 (1935), to determine all the objections to the Commission Plan raised on appeal, the Circuit Court of Appeals for the Ninth Circuit has left unanswered important questions which the public interest requires promptly to be settled in this Court.

This Court in *Continental Illinois National Bank & T. Co.* v. *Chicago, R. I. & P. Ry., supra,* said, at page 685:

> "The delay and expense incident to railroad receiverships and foreclosure sales constituted, probably, the chief reasons which induced the passage of § 77; and to permit the perpetuation of either of these evils under this new legislation would be subversive of the spirit in which it was conceived and adopted. Not only are those who institute the proceeding and those who carry it forward bound to exercise the highest degree of diligence, but it is the duty of the court and of the Interstate Commerce Commission to see that they do. Proceedings of this character, involving public and private interests of such magnitude, should, so far as practi-

cable, be given the right of way both by the court and by the commission, to the end that they may be speedily determined."

For nearly eight years the Debtor has been in default in the payment of interest on its First Mortgage Bonds, and for nearly seven of those years this reorganization proceeding has been dragging its weary way through the Commission, the District Court, and the Circuit Court of Appeals, over every obstacle which the junior interests could manage to interpose. As already stated, these junior interests, both before the Commission and in the courts, have attacked substantially every feature of the Commission Plan, including the interest rates on the new securities (notwithstanding that they are less than the interest rates on the existing securities against which they are allocated), the conversion right provided for the new Income Bonds, the participating rights granted to the new Preferred Stock, and the terms of the Sinking Fund and the Capital Fund. They have inspired the Refunding Mortgage Trustee to raise numerous lien questions, many of them so frivolous that they have been abandoned by the Refunding Mortgage Trustee along the road, and all of them determined (clearly correctly) by the Commission and the District Court in favor of the First Mortgage. They have set up mutually contradictory claims with respect to the provision of the Commission Plan that reorganization should be effected without prejudice to any claims on "accommodation collateral," one junior interest contending that the Commission Plan should have expressly released the "accommodation collateral" to its pledgors, and another claiming that the Commission Plan should have expressly appropriated this "accommodation collateral" for the benefit of the claim for which it was pledged.

The substance of many of these objections relates to matters of "public interest" and is within what is submitted to be the exclusive jurisdiction of the Commission. In urging that the "accommodation collateral" should be dealt with directly by the plan although it is not the property of the Debtor, these junior interests request action clearly beyond the jurisdiction of a bankruptcy court. The correctness of the determinations of the Commission and the District Court with respect of these and all other objections will be clear to this Court upon a summary examination of the questions involved.

In view of the great public interest in promoting the prompt reorganization of railroads generally, as well as of the present Debtor, your petitioners urge that this Court, as it recently did in *Securities and Exchange Commission* v. *U. S. Realty & Improvement Co.*, 310 U. S. 434 (1940), and in *Consolidated Rock Products Co.* v. *DuBois, supra,* deal with the entire case upon the entire record.[1] Your petitioners believe that upon such consideration of the case this Court can reach no other conclusion than that the decision of the Circuit Court of Appeals for the Ninth Circuit should be reversed and the order of the District Court dated August 15, 1940, affirmed. If, however, this Court shall, as your petitioners do not believe will be the case, find any error in the action of the Commission or the District Court in the entire record, your petitioners urge that this Court, in addition to correcting such error, also affirm such of the determinations of the District Court as may be found to be without error. Only by such action can repetition of pos-

[1]In both of these cases, presumably in order to expedite the particular proceeding and all other similarly situated reorganizations, this Court decided several important questions of bankruptcy reorganization law although rulings on some of those questions were not necessary in order to affirm or reverse the Circuit Court of Appeals.

sible errors already made be avoided without ultimate correction in this Court at some indefinite future time, and the reorganization of the Debtor consummated with some degree of expedition.

8. In assessing the costs of the appeal against the Committee, the First Mortgage Trustees, and RFC, named as appellees before it (R. 2675-6), the Circuit Court of Appeals for the Ninth Circuit has decided an important question of federal law which has not been, but should be, settled by this Court.

Such costs are not nominal. In the instant case they aggregate $4,239.29, and in the more complicated cases already pending in various circuit courts of appeals they will greatly exceed that amount.

Notwithstanding the fact that Section 77 contemplates that the Commission may, as it did in the instant case, formulate its own plan of reorganization independently of any proposals of any of the parties, whereas under Chapter X of the Bankruptcy Act the Securities and Exchange Commission acts only in an advisory capacity in the formulation of reorganization plans (§ 172, 11 U. S. C. § 573), Section 77, unlike Chapter X (§ 208, 11 U. S. C. § 608), provides no specific machinery whereby the Commission may appear in the proceeding in the district court with reference to the plan. Those railroad securityholders who assume the responsibility and expense of defending Commission proposals in the district courts are therefore supplying to the district courts assistance which they might not otherwise have in performing their functions under Section 77.

To penalize such securityholders for continuing to defend the Commission's plans in the circuit courts of appeals after the district courts have approved such plans is not

only wholly unfair and inequitable but necessarily will discourage securityholders or mortgage trustees from performing a useful, if not a necessary, function in assisting the circuit courts of appeals to arrive at proper decisions. See *In re Chicago & North Western Ry.*, 121 F. (2d) 791, 798 (C. C. A. 7th, 1941).

WHEREFORE, your petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, commanding that Court to certify and send to this Court on a day certain to be named therein, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 9714, *In the Matter of the Western Pacific Railroad Company, a corporation, Debtor; Western Pacific Railroad Corporation, a corporation, et al., Appellants* v. *Institutional Bondholders Committee, et al., Appellees*, to the end that said cause may be reviewed and determined by this Court; that the Decree of said Court, entered November 28, 1941, be reversed, that the Order of the District Court entered August 15, 1940, be affirmed; and that petitioners be granted such other and further relief as to this Honorable Court may seem just and proper.

Dated: December 20, 1941.

ROBERT T. SWAINE,
Attorney for Frederick H. Ecker, John W. Stedman and Reeve Schley, constituting the Institutional Bondholders Committee, Petitioners.

HERBERT W. CLARK,
Of Counsel.

APPENDIX

Bankruptcy Act, § 77 (11 U. S. C. § 205).

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"(d) The debtor, after a petition is filed as provided in subsection (a), shall file a plan of reorganization within six months of the entry of the order by the judge approving the petition as properly filed, or if heretofore approved, then within six months of the effective date of this Act, and not thereafter unless such time is extended by the judge from time to time for cause shown, no single extension at any one time to be for more than six months. Such plan shall also be filed with the Commission at the same time. Such plans may likewise be filed at any time before, or with the consent of the Commission during, the hearings hereinafter provided for, by the trustee or trustees, or by or on behalf of the creditors being not less than 10 per centum in amount of any class of creditors, or by or on behalf of any class of stockholders being not less than 10 per centum in amount of any such class, or with the consent of the Commission by any party in interest. After the filing of such a plan, the Commission, unless such plan shall be considered by it to be prima facie impracticable, shall, after due notice to all stockholders and creditors given in such manner as it shall determine, hold public hearings, at which opportunity shall be given to any interested party to be heard, and following which the Commission shall render a report and order in which it shall approve a plan, which may be different from any which has been proposed, that will in its opinion meet with the requirements of subsections (b) and (e) of this section, and will be compatible with the public interest; or it shall render a report and order in which it shall refuse to approve any plan. In such report the Commission shall state fully the reasons for its conclusions.

"The Commission may thereafter, upon petition for good cause shown filed within sixty days of the date of its order, and upon further hearings if the Commission shall deem necessary, in a supplemental report and order modify any plan which it has approved, stating the reasons for such modification. The Commission, if it approves a plan, shall thereupon certify the plan to the court together with a transcript of the proceedings before it and a copy of the report and order approving the plan. No plan shall be approved or confirmed by the judge in any proceeding under this section unless the plan shall first have been approved by the Commission and certified to the court.

"(e) Upon the certification of a plan by the Commission to the court, the court shall give due notice to all parties in interest of the time within which such parties may file with the court their objections to such plan, and such parties shall file, within such time as may be fixed in said notice, detailed and specific objections in writing to the plan and their claims for equitable treatment. The judge shall, after notice in such manner as he may determine to the debtor, its trustee or trustees, stockholders, creditors, and the Commission, hear all parties in interest in support of, and in opposition to, such objections to the plan and such claims for equitable treatment. After such hearing and without any hearing if no objections are filed, the judge shall approve the plan if satisfied that: (1) It complies with the provisions of subsection (b) of this section, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; (2) the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of such hearing, are

reasonable, are within such maximum limits as are fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge; (3) the plan provides for the payment of all costs of administration and all other allowances made or to be made by the judge, except that allowances provided for in subsection (c), paragraph (12) of this section, may be paid in securities provided for in the plan if those entitled thereto will accept such payment, and the judge is hereby given power to approve the same.

"If the judge shall not approve the plan, he shall file an opinion, stating his conclusions and the reason therefor, and he shall enter an order in which he may either dismiss the proceedings, or in his discretion and on motion of any party in interest refer the proceedings back to the Commission for further action, in which event he shall transmit to the Commission a copy of any evidence received. If the proceedings are referred back to the Commission, it shall proceed to a reconsideration of the proceeding under the provisions of subsection (d) hereof. If the judge shall approve the plan, he shall file an opinion, stating his conclusions and the reasons therefor, and enter an order to that effect, and shall send a certified copy of such opinion and order to the Commission. The plan shall then be submitted by the Commission to the creditors of each class whose claims have been filed and allowed in accordance with the requirements of subsection (c) hereof, and to the stockholders of each class, and/or to the committees or other representatives thereof, for acceptance or rejection, within such time as the Commission shall specify, together with the report or reports of the Commission thereon or such a summarization thereof as the Commission may approve, and the opinion and order of the judge: Provided, That submission to any class of stockholders shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, (a) that at the time of the finding the corporation is insolvent, or that at the time of

the finding the equity of such class of stockholders has no value, or that the plan provides for the payment in cash to such class of stockholders of an amount not less than the value of their equity, if any, or (b) that the interests of such class of stockholders will not be adversely and materially affected by the plan, or (c) that the debtor has pursuant to authorized corporate action accepted the plan and its stockholders are bound by such acceptance: Provided further, That submission to any class of creditors shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, that the interests of such class of creditors will not be adversely and materially affected by the plan, or that at the time of the finding the interests of such class of creditors have no value, or that the plan provides for the payment in cash to such class of creditors of an amount not less than the value of their interests. For the purposes of this section the acceptance or rejection by any creditor or stockholder shall be in writing, executed by him or by his duly authorized attorney, committee, or representative. If the United States of America, or any agency thereof, or any corporation (other than the Reconstruction Finance Corporation) the majority of the stock of which is owned by the United States of America, is a creditor or stockholder, the interests or claims thereof shall be deemed to be affected by the plan, and the President of the United States or any officer or agency he may designate, is hereby authorized to act in respect of the interests or claims of the United States or of such agency or other corporation. The expense of such submission shall be certified by the Commission and shall be borne by the debtor's estate. The Commission shall certify to the judge the results of such submission.

"Upon receipt of such certification, the judge shall confirm the plan if satisfied that it has been accepted by or on behalf of creditors of each class to which submission is required under this subsection holding more than two-thirds in amount of the total of the allowed claims of such class

which have been reported in said submission as voting on said plan, and by or on behalf of stockholders of each class to which submission is required under this subsection holding more than two-thirds of the stock of such class which has been reported in said submission as voting on said plan; and that such acceptances have not been made or procured by any means forbidden by law: Provided, That, if the plan has not been so accepted by the creditors and stockholders, the judge may nevertheless confirm the plan if he is satisfied and finds, after hearing, that it makes adequate provision for fair and equitable treatment for the interests or claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those rejecting it and all the relevant facts; and that the plan conforms to the requirements of clauses (1) to (3), inclusive, of the first paragraph of this subsection (e): Provided further, That if, in any reorganization proceeding under this section, the United States is a creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against, the debtor, as creditor or stockholder), no plan which does not provide for the payment thereof shall be confirmed by the judge except upon the acceptance certified to the court, of a lesser amount by the President of the United States or the officer or agency designated by him pursuant to the provisions of the preceding paragraph hereof: Provided further, That if the President of the United States or such officer or agency shall fail to accept or reject such lesser amount for more than ninety days after receipt of written notice so to do from the court, accompanied by a certified copy of the plan, the consent of the United States insofar as its claims for taxes or customs duties are concerned shall be conclusively presumed. If the judge shall confirm the plan, he shall enter an order and file an opinion, with a statement of his conclusions and his reasons therefor. If the judge shall not confirm the plan, he shall file an opinion, with a statement of his conclusions and his reasons there-

for, and enter an order in which he shall either dismiss the proceedings, or, in his discretion and on the motion of any party in interest, refer the case back to the Commission for further proceedings, including the consideration of modifications of the plan or the proposal of new plans. In the event of such a reference back to the Commission, the proceedings with respect to any modified or new plan shall be governed by the provisions of this section in like manner as in an original proceeding hereunder.

"If it shall be necessary to determine the value of any property for any purpose under this section, the Commission shall determine such value and certify the same to the court in its report on the plan. The value of property used in railroad operation shall be determined on a basis which will give due consideration to the earning power of the property, past, present, and prospective, and all other relevant facts. In determining such value only such effect shall be given to the present cost of reproduction new and less depreciation and original cost of the property, and the actual investment therein, as may be required under the law of the land, in light of its earning power and all other relevant facts."

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Interstate Commerce Act, § 14(1) [49 U. S. C. § 14(1)].

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"*§ 14. Reports and decisions of commission.* (1) *Reports of investigations by commission.* Whenever an investigation shall be made by said commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the commission, together with its decision, order, or requirement in the premises; and in case damages are awarded, such report shall include the findings of fact on which the award is made."

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